FISCAL IMPACT REPORT

		ORIGINAL DATE	2/5/2020		
SPONSOR	Brown	**LAST UPDATED**		**HB**	276
SHORT TITLE	County Road Fund Donation Tax Deductions			**SB**	
				ANALYST	Torres

REVENUE (dollars in thousands)

Estimated Revenue					Recurring or Nonrecurring	Fund Affected
FY20	**FY21**	**FY22**	**FY23**	**FY24**		
Indeterminate	Indeterminate, likely more than ($1,070.0)	Indeterminate, likely more than ($1,070.0)	Indeterminate, likely more than ($1,070.0)	Indeterminate, likely more than ($1,070.0)	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB104

SOURCES OF INFORMATION
LFC Files

Responses Received From
New Mexico Attorney General

SUMMARY

Synopsis of Bill

House Bill 276 amends the Income Tax Act and Corporate Income and Franchise Tax Act to allow for a deduction from net income (for individual taxpayers) and from taxable income (for corporate taxpayers) in an amount equal to fifty percent of a donation made by the taxpayer to a county road fund. For both individual taxpayers and corporate taxpayers, the deduction shall not exceed $1 million.

HB276 allows a taxpayer making the eligible donation to request the donated amount apply to a specific road or bridge, or portion thereof, and a county may return the donation if it does not agree to the request. To receive the deduction, the taxpayer must submit to the Taxation and Revenue Department (TRD) information required by the secretary establishing that the taxpayer is eligible to claim the deduction. The bill requires TRD to compile an annual report on the deduction and report the findings to the appropriate interim legislative committees.

The proposed amendments are to apply to taxable years beginning on or after January 1, 2020. There is no delayed repeal date but LFC recommends adding one.

FISCAL IMPLICATIONS

This bill creates a tax expenditure with a cost that is impossible to determine but likely significant.

The fiscal impact from the creation of this tax deduction is unclear due to the unknown number of donations, the size of the donations, and the tax liability of the donating taxpayers. Assuming only ten personal income tax payers and ten corporate tax payers donate $1 million each and are in the highest tax bracket, the cost to the state could be $1.1 million. Given the potential impact with only a few tax payers, it is likely that the cost will be more significant than $1.1 million.

LFC has serious concerns about the significant risk to state revenues from tax expenditures and the increase in revenue volatility from erosion of the revenue base. The committee recommends the bill adhere to the LFC tax expenditure policy principles for vetting, targeting, and reporting or be held for future consideration.

This bill may be counter to the LFC tax policy principle of adequacy, efficiency, and equity. Due to the increasing cost of tax expenditures, revenues may be insufficient to cover growing recurring appropriations.

Estimating the cost of tax expenditures is difficult. Confidentiality requirements surrounding certain taxpayer information create uncertainty, and analysts must frequently interpret third-party data sources. The statutory criteria for a tax expenditure may be ambiguous, further complicating the initial cost estimate of the expenditure's fiscal impact. Once a tax expenditure has been approved, information constraints continue to create challenges in tracking the real costs (and benefits) of tax expenditures.

SIGNIFICANT ISSUES

The deduction provided by this bill reduces state taxes for donations contributed by that taxpayer to a county road fund. In doing so, HB104 is effectively a subsidy, by the state government, of the county road fund, at the discretion of the taxpayer.

PERFORMANCE IMPLICATIONS

The LFC tax policy of accountability is met with the bill's requirement to report annually to an interim legislative committee regarding the data compiled from the reports from taxpayers taking the deduction and other information to determine whether the deduction is meeting its purpose.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 104 (County Road Fund Donation Tax Credit), in that HB104 is nearly identical to HB276 except HB 104 structures the tax advantage to the taxpayer as a tax credit against tax liability rather than a deduction from net or taxable income. HB104 also has a sunset date.

TECHNICAL ISSUES

The bill does not specify when the deduction can be claimed with respect to when the donation is made. Consideration should be given to adding language that specifies the deduction can be claimed for donations made during the same taxable year for which the deduction is claimed.

The bill does not specify that donations must be made to a county in New Mexico in order to receive the deduction. Without that specification, taxpayers may be able to claim a deduction against their New Mexico income tax liability for donations to county road funds in other states.

Does the bill meet the Legislative Finance Committee tax policy principles?

1. **Adequacy**: Revenue should be adequate to fund needed government services.
2. **Efficiency**: Tax base should be as broad as possible and avoid excess reliance on one tax.
3. **Equity**: Different taxpayers should be treated fairly.
4. **Simplicity**: Collection should be simple and easily understood.
5. **Accountability**: Preferences should be easy to monitor and evaluate.

Does the bill meet the Legislative Finance Committee tax expenditure policy principles?

1. **Vetted**: The proposed new or expanded tax expenditure was vetted through interim legislative committees, such as LFC and the Revenue Stabilization and Tax Policy Committee, to review fiscal, legal, and general policy parameters.
2. **Targeted**: The tax expenditure has a clearly stated purpose, long-term goals, and measurable annual targets designed to mark progress toward the goals.
3. **Transparent**: The tax expenditure requires at least annual reporting by the recipients, the Taxation and Revenue Department, and other relevant agencies.
4. **Accountable**: The required reporting allows for analysis by members of the public to determine progress toward annual targets and determination of effectiveness and efficiency. The tax expenditure is set to expire unless legislative action is taken to review the tax expenditure and extend the expiration date.
5. **Effective**: The tax expenditure fulfills the stated purpose. If the tax expenditure is designed to alter behavior – for example, economic development incentives intended to increase economic growth – there are indicators the recipients would not have performed the desired actions "but for" the existence of the tax expenditure.
6. **Efficient:** The tax expenditure is the most cost-effective way to achieve the desired results.

LFC Tax Expenditure	Met?	Comments
Vetted	✘	Not heard by an interim committee.
Targeted		
Clearly stated purpose	?	Not stated, but presumably to increase county road funds.
Long-term goals	✘	None.
Measurable targets	✘	None.
Transparent	✓	TRD is required to report annually to LFC and the Revenue Stabilization and Tax Policy Committee.
Accountable		
Public analysis	?	It is unclear whether TRD reporting on the number of taxpayers receiving the deduction and the aggregate amount of the deductions will be sufficient to determine effectiveness and efficiency of the tax expenditure.
Expiration date	✓	The bill includes expiration dates.
Effective		
Fulfills stated purpose	?	There is no purpose statement or measurable goals and targets to determine if the exemption fulfills intended outcomes.
Passes "but for" test	?	
Efficient	?	A potentially more efficient method of increasing county road funds would be through making an appropriation, giving the legislature full authority on an annual basis of the amount of state funding to be distributed to county road funds.
Key: ✓ Met ✘ Not Met ? Unclear		

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